

Hon. Paul G. Gardephe

December 12, 2017

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VIA ECF

December 12, 2017

Hon. Paul G. Gardephe
United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, NY 10007
Fax: (212) 805-7986

Re: *Bytemark, Inc. v. Xerox Corp. et al.*, Case No. 1:17-cv-01803

Dear Judge Gardephe:

We represent Plaintiff Bytemark, Inc. We write to request leave from the Court to file a sur-reply no longer than five (5) pages in response to Defendants' Memorandum in Reply to Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss Counts One, Two, Eight, Nine, and Ten of Plaintiff's First Amended Complaint, submitted on December 11, 2017.

In their Reply brief, Defendants Xerox Corp., ACS Transport Solutions, Inc., Xerox Transport Solutions, Inc., Conduent Inc., and New Jersey Transit Corp. (collectively, "Defendants") misstate the law on several key points—in particular, the legal standards and burdens of proof. Additionally, Defendants make significant misstatements of facts. Plaintiff seeks an opportunity to counter these misstatements—which appear for the first time in Defendants' Reply brief and to which Plaintiff has not previously had a chance to respond—and believes that reply papers are appropriate in the interests of justice and to avoid giving an unfair advantage to Defendants, who have submitted over fifty pages of briefing to the Court. Plaintiff's sur-reply would be narrowly confined to these issues and would not repeat arguments made in its Opposition brief or in any prior submissions to the Court.

For the foregoing reasons, Plaintiff respectfully asks that the Court grant its request for leave to file a sur-reply no longer than five pages in response to Defendants' motion. We thank the Court for its time and consideration.

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Very truly yours,

/s/ Dariush Keyhani

Dariush Keyhani
Counsel for Plaintiff

cc: Defendants' Counsel of Record (via ECF)